1948. **K** **File No.** European Vagrancy II | 48.

Legal Dept-s

B **BRANCH**

Subject:— Rules and Notifications under the European ~~Vag~~ Vagrancy Act 1874

File No. European Vergjancy II

48

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Office of the R.L.A.

It is proposed to close down the Working Men's Hostel in charge of the Salvation Army at Central Agripada, which is certified to be fit for a workhouse under section 11 of the European Vagrancy Act, 1874, on the ground that the institution appears to be exclusively for the benefit of European vagrants and cannot be allowed to run any longer at Government expense. The European Vagrancy Act, 1874, is still on the Statute Book and has not been substantially amended by the recent adaptations. Section 5 of that Act is to the following effect: A magistrate of the first class in a case where a vagrant comes before him who is not likely to obtain employment at once or if he has reason to believe that a declaration of vagrancy has on any former occasion been recorded in respect of such vagrant, shall require the vagrant to go to a Government workhouse and shall draw up an order to that effect. Section 11, which says that the appropriate Government ~~workhouse~~ may provide workhouses with their necessary furniture, etc., at such places as it may think proper for the temporary reception of vagrants, etc., has to be read along with section 5 and, when so read, it must be construed as casting upon Government an obligatory duty of maintaining a workhouse, as, otherwise, it would be impossible for any magistrate to give effect to the mandatory provisions of section 5. A workhouse provided or certified under section 11 must of necessity be exclusively for the benefit of the Europeans since the whole Act is intended for their benefit. So long as the Act is in force, Government would naturally have to bear the expenses of carrying into effect the provisions thereof. Neither such expense nor the fact that the benefits go exclusively to Europeans would be a sufficient ground for not giving effect to

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to them. A workhouse is the very pivot on which the whole Act turns as the scheme shows. The proper procedure would be to remove the Act from the Statuate Book and to put European Vagrants on the same footing as any other vagrants in this country. However, so long as a special enactment is made for Europeans, it will not be possible to bring their case under the general vagrancy laws. It is a matter, therefore, for Government's consideration whether, in the absence of any workhouse provided by Government under section 11, it is feasible and desirable to close down the Working Mens' Hostel incharge of the Salvation Army at Cent Agripada.

2. It is also doubtful whether the 10 European vagrants now detained in the workhouse can be released under section 401 of the Code of Criminal Procedure as proposed by H?D. The only part of that section which seems applicable is sub-section (4A), which says that the provisions of the above sub-sections shall also apply to any order passed by a criminal court under any section of this Code or of any other law which restri the liberty of any person or imposes any liability upon him or his property. On the footing that the order made by a magistrate under section 5 is an order by a criminal court restricting the liberty of the person it would be possible to remit the whole or any part of the period of detention. However, presumably, the magistrates do not mention any specified period. That period is indefinite depending upon the chances of the vagrant securing employment. A special procedure for the release of a vagrant kept in a workhouse has been

provided in section 16 of the European Vagrancy Act and that special procedure is intended to give effect to the main object of the Act. As a general rule such special procedure must prevail over the general provisions of section 401 of the Code of Criminal Procedure..... and it is rather doubtful whether the release of the vagrants can be effected in any manner other than that contemplated by section 16.

3. Subject to the above remarks, a notification under section 21 is appended herewith.

S.D.

P.M. Lad.

Remembrancer of Legal Affairs.

U.R. to H.D. No. 4203, dated the 30th April 1949.

VDP.
7-6-56.

Notification.

Home Department.
Bombay Castle, 1948.

European Vagrancy Act, 1874.

No. - In exercise of the powers conferred by section 11 of the European Vagrancy Act, 1874 (IX of 1874), the Government of Bombay is pleased to order that the Working Man's Hostel in charge of the Salvation Army at Central Agripada 9 Bombay, certified to be fit for a Workhouse for the purposes of the said Act shall not be deemed a Government Workhouse under the said Act.

By order of the Governor of Bombay,

Secretary to Government.

VOP.
7-6-48.